

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JIMMY MASS, a/k/a KOOL AID,

Defendant-Appellant.

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UNPUBLISHED

September 11, 2003

No. 237218

Monroe Circuit Court

LC No. 96-027539-FH

Before: O’Connell, P.J., and Jansen and Fort Hood, JJ.

MEMORANDUM.

Defendant was convicted, following a jury trial, of possession with intent to deliver more than 225 but less than 650 grams of cocaine, MCL 333.7401(2)(a)(ii), and conspiracy to deliver that amount of cocaine, MCL 750.157a. The Supreme Court found sufficient evidence to support the possession with intent to deliver conviction, but reversed the conspiracy conviction based on the jury instructions. *People v Mass*, 464 Mich 615, 628, 641; 628 NW2d 540 (2001). The prosecutor was given the option of conducting a new trial on the original conspiracy charge with proper jury instructions or a remand for entry of a conviction for conspiracy to deliver less than fifty grams of cocaine. *Id.* at 641 n 30. The trial court entered a judgment of conviction for conspiracy to deliver less than fifty grams of cocaine at the prosecutor’s request. Defendant was sentenced to twenty to thirty years’ imprisonment for the possession with intent to deliver conviction and ten to twenty years’ imprisonment for the conspiracy conviction. He appeals as of right, and we affirm.

Defendant first alleges that the trial court contradicted the law of the case by concluding that defendant played an integral role in the drug transaction. We disagree. A circuit court judge is required to follow published decisions of the Court of Appeals and Michigan Supreme Court. *People v Hunt*, 171 Mich App 174, 180; 429 NW2d 824 (1988). There is no requirement that one circuit court judge follow the decision of another. *Id.*<sup>1</sup> Accordingly, this claim of error is without merit.

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<sup>1</sup> The trial court that presided over the original trial and sentencing retired. The resentencing occurred before the successor trial judge. Defendant contends that the successor judge disregarded the trial court’s factual findings where a clearly erroneous standard applied. We  
(continued...)

Defendant next alleges that the trial court erred by failing to recognize defendant's age, work history, and prison record as objective and verifiable reasons to support a downward departure and violated the principle of proportionality. We disagree. The proportionality of a sentence is reviewed for an abuse of discretion. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990). "A sentence constitutes an abuse of discretion if it violates the principle of proportionality by being disproportionate to the seriousness of the circumstances surrounding the offense and the offender." *People v Paquette*, 214 Mich App 336, 344-345; 543 NW2d 342 (1995). A recitation of a "garden variety" of factors, even if objective and verifiable, is insufficient to satisfy the requirement that substantial and compelling reasons exist to deviate from prescribed sentences. *People v Daniel*, 462 Mich 1, 8-9; 609 NW2d 557 (2000). The factors cited by defendant are insufficient to meet the substantial and compelling requirement for downward departure, and the sentence was not an abuse of discretion.

Affirmed.

/s/ Peter D. O'Connell  
/s/ Kathleen Jansen  
/s/ Karen M. Fort Hood

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(...continued)

note that the original trial judge did not make findings of fact and conclusions of law that resulted in defendant's convictions. Rather, a jury determined defendant's guilt. The original trial judge, to depart from the sentencing guidelines, cited to the minor role that defendant played in the ultimate transaction as a substantial and compelling reason for departure. While this conclusion correctly identified defendant's role as an aided and abettor with respect to the delivery of the large quantity of drugs, testimony at trial also revealed that defendant indicated that he could have supplied the drugs if he had been given earlier notice. Thus, the factual recitations by both the original and successor trial judge are accurate reflections of the record.